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August 27, 1996

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FEDERAL COMMUNICATIONS COMMISSION
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BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

**Re: Amendment of Section 73.606(b),
Table of Allotments,
Television Broadcast Stations
(Kansas City, Missouri)**

Dear Mr. Caton:

On behalf of KCWB-TV, Inc., permittee of station KCWB (formerly KAIZ), Channel 32, Kansas City, Missouri, we are transmitting herewith for filing an original and four copies of "Reply Comments" in the above proceeding.

A "Return Copy" of this filing is also enclosed. Please date-stamp the "Return Copy" and return it to confirm your receipt.

Should you have any questions, please contact any of the undersigned counsel.

Respectfully submitted,

Barbara K. Gardner

Meredith S. Senter, Jr.
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RLR/kkj
Enclosures

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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of

Amendment of Section 73.606(b),
Table of Allotments,
TV Broadcast Stations.
(Kansas City, Missouri)

)
)
) MM Docket No. 96-134
) RM-8817
)
)

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

REPLY COMMENTS OF KCWB-TV, INC.

KCWB-TV, Inc. (formerly known as TV-32, Inc.), permittee of television station KCWB (formerly KAIZ), Kansas City, Missouri, and the proponent of the above-captioned rulemaking proposal to substitute NTSC Channel 29 for NTSC Channel 32 at Kansas City, hereby replies to the comments of Miller Broadcasting, Inc. ("Miller") submitted in response to the Notice of Proposed Rule Making in this proceeding, DA 96-945 (released June 21, 1996) ("NPRM"). As is now shown, Miller's request that this proceeding be held in abeyance pending resolution of the advanced television allotment proceeding is not in the public interest, and should be promptly denied.

Miller, licensee of television station KMCI, Channel 38, Lawrence, Kansas, notes that the nationwide digital TV ("DTV") allotment/assignment plan submitted in the Commission's advanced television proceeding in January, 1995 by the Association for Maximum Service Television, Inc. ("MSTV") proposes to allot Channel 29 as the DTV frequency for Miller's NTSC Channel 38 at Lawrence. Miller therefore contends that the Commission must forego a decision on the Channel 29 NPRM until after resolution of the current phase of the advanced TV proceeding.¹ Such is assuredly not the case.

In the first place, the Sixth Further Notice states categorically that "the MSTV Table could not be adopted as submitted," since, among other reasons, it is based on an outdated (1992) television station database, and is not based on the final DTV system performance values.²

Second, the FCC's own draft DTV Table of Allotments (based on its May 13, 1996 TV Engineering Data Base), appended to the Sixth Further Notice, does not propose DTV Channel 29 for NTSC Channel 38 at Lawrence, Kansas — it instead proposes DTV Channel 39 there.³ Accordingly, Miller's concern is moot.⁴

¹ Sixth Further Notice of Proposed Rule Making, Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, FCC 96-317, MM Docket No. 87-268 (released August 14, 1996) ("Sixth Further Notice").

² Id. at 14 para. 30.

³ Id. at B-18.

⁴ Although the FCC's draft DTV Table instead tentatively allots DTV Channel 29 to the licensee of NTSC Channel 4 at Kansas City, Missouri, KCWB will address the inconsistency between that proposal and the instant proposal to substitute NTSC Channel 29 for NTSC Channel 32 at Kansas City in its comments on the Sixth

(continued...)

Significantly, Miller has reversed the order in which the relevant allotment and assignment decisions should be made. Miller argues that action in the instant rulemaking proceeding to change the NTSC allotment in Kansas City from Channel 32 to Channel 29 should be delayed until the FCC has finalized its DTV Table of Allotments. The draft DTV Table, however, incorrectly assumes that NTSC Channel 32 will become operational at its currently authorized transmitter site, pairs that channel with DTV Channel 31, and (again incorrectly) assumes that Channel 31 can be activated from a site located within three miles of the currently authorized Channel 32 site.⁵ Thus, if the FCC postpones action in the present proceeding, it will be unable to take the change proposed in the instant NPRM into account in the final DTV Table of Allotments -- a change which is nevertheless necessary because, as the NPRM concluded, KCWB cannot operate a Kansas City station on Channel 32 in compliance with the Commission's spacing requirements.⁶

In the Sixth Further Notice, the FCC specifically stated that it would not "freeze" or otherwise delay amendments to the NTSC TV Table of Allotments that propose to alter the channel on which a station operates. The FCC provided, however, that such changes that include a modification of a station's authorization would be conditioned on the outcome of the DTV

⁴(...continued)
Further Notice.

⁵ Sixth Further Notice at 23 para.56, B-23.

⁶ NPRM at 2.

rulemaking proceeding.⁷ Furthermore, it made clear that the draft DTV Table of Allotments may undergo considerable revision before it becomes final.⁸

Accordingly, it will disserve Kansas City television viewers to fail to ensure the activation of a new local television service by holding the present proceeding in abeyance pending resolution of the digital television proceeding — a process that could take years. As the Commission noted in adopting the NPRM, “the public interest would be served by proposing the substitution of UHF Television Channel 29 for UHF Television Channel 32 at Kansas City, Missouri, as it will permit the initiation of a new television service in Kansas City.”⁹ In addition, KCWB’s affiliation with the Warner Brothers network will provide the first over-the-air programming of this kind in the Kansas City area.

CONCLUSION

All factors counsel prompt resolution of this proceeding. First, the NTSC Table of Allotments should be amended now to substitute Channel 29 for Channel 32 at Kansas City, so that this change can be taken into account in revising the DTV Table of Allotments. Otherwise, the final DTV Table will provide for KCWB’s operation of NTSC Channel 32 and DTV Channel 31 from a site that is not usable for these purposes.

⁷ Sixth Further Notice at 25, para. 61.

⁸ Id. at 15 para. 31, 37 para. 87, B-1.

⁹ NPRM at 2.

More importantly, prompt substitution of Channel 29 for Channel 32 will ensure the initiation of new television service by KCWB in Kansas City.

Respectfully submitted,

KCWB-TV, Inc.

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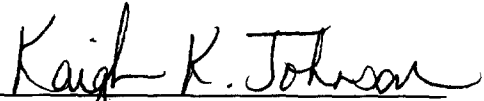
Its Attorneys

CERTIFICATE OF SERVICE

I, Kaigh K. Johnson, do hereby certify that true and correct copies of the foregoing
"Reply Comments of KCWB-TV, Inc." were mailed this 27th day of August, 1996 to the
following:

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